IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Chamber Summons No.86 of 2005

In

Misc.Petition NO.17 of 2004

The Administrator General of
Maharashtra State ... Petitioner

V/s

Dr.Amee Piyush Shah and Anr .. Respondents

Mr.A.L.N.Khatri for Petitioner

Mr.Kishore Jain with Mr.Akran i/b B.G.Saraf for Respondent no.1

Mfr.K.Munshi i/b S.Satpute for Respondent no.2

CORAM:S.R.SATHE,J.

DATED:5th December 2005

P.C.:-

. Heard both the learned Advocates.

2. The Administrator General of Maharashtra State has filed an application under Section 10 of Administrator General Act for administration of estate Suraiya J. Shaikh who died on 31-1-2004. She died intestate.

3. As a result of the order passed by this Court (Coram: S.J.Vajifdar J), the Administrator took charge of various immovable properties belonging to deceased. Thereafter one Dr.Amee P.Shah allegedly claiming to be donee of the immovable and moveable properties filed Notice of Motion. He alleged that deceased was a family friend of her father Dhimant H. Thakkar, practising Solicitor and that on 1-7-2004 deceased made a declaration of oral gift at the house of her father Dhimant H. Thakkar. When the deceased gifted her all moveable and immovable properties belonging to deceased in her favour. Thereafter the said Dr.Amee Piyush Shah took out Notice of Motion and prayed that evidence of Dr.Demant H. Thakkar and Khorshed Adi Patel be recorded expeditiously, as they both are of advance age. Accordingly, the said Notice of Motion was allowed and commissioner was appointed to record the evidence of above mentioned these two witnesses. It is at this stage the present Chamber Summons is filed by the Administrator General of Maharashtra State.

4. It is the case of Administrator General that taking into consideration peculiar circumstances of the case where Respondent no.1 has claimed the property of crores worth under the alleged oral gift, the above mentioned two witnesses would be required to prove the pronouncement of oral gift alleged to have been made by

deceased. It is the case of Administrator that if first witness is directed to file affidavit of evidence and thereafter his cross examination is carried out and then the plaintiff is allowed to file affidavit of second witness and then to carry out cross examination of the said witness, the subsequent witness would get an opportunity to cover up the lacuna in the evidence of first witness. Hence the Administrator General has prayed that Respondent no.1 be directed to file affidavit of both the above mentioned witnesses at one and the same and their cross examination be commenced afterwards.

5. The Chamber Summons taken out by the Administrator General is strongly opposed by Respondent Dr. Amee Piyush Shah on the ground that merely because the property involved in the matter is wroth crores of Rupees there cannot be deviation from usual course of recording evidence under law and if such unusual course is followed the party intending to examine the above mentioned witnesses may not be in a position to exercise its option.

6. It is needless to say that when witnesses are is to be examined, their evidence has to be recorded normally one after the other. It is true that initially the prayed is expected to submit a list of witnesses thereby indicating the names of the witnesses that are likely to be examined to prove its case. However, there is

nothing in law which says that their affidavit of evidence in lieu of examination in chief has to be filed simultaneously. It may happen that even if the party has given names of more witnesses to be examined on its behalf it may after examining first or any other witness decide to drop other witness or witnesses. When such is the position, it would not be proper to direct the Respondent no.1 to file affidavit in lieu of examination in chief of the above mentioned two witnesses viz. Dhimant H. Thakkar and Khorshed Adi Patel simultaneously. If such direction is given it would amount to not allowing the Respondent no.1 to exercise her choice. There are no special circumstances to deviate from the usual rule of recording evidence. Hence, Petitioner's prayers in this behalf cannot be accepted. However, it is hereby directed that after cross examination of first witness the Respondent no.1 should immediately tender the affidavit in lieu of examination in chief of other witnesses before the Commissioner.

7. in these terms, Chamber Summons is disposed of.

(S.R.SATHE,J.)